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14. Trial (§ 253 (9)*)—Instructions—Ignoring Evidence—Contributory Negligence.—In pedestrian's action for injuries when he fell from bridge in the nighttime because of absence of guardrail, requested instruction that if plaintiff knew there was no rail, and fell through inattention, he could not recover, held properly refused, in view of testimony of plaintiff as to surrounding circumstances which distracted his attention.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 412.]

Error to Corporation Court of Charlottesville.

Action by J. R. Jones against the City of Charlottesville. Judgment for plaintiff, and defendant brings error. Affirmed.

Duke & Duke, of Charlottesville, for plaintiff in error.

Allen & Walsh, of Charlottesville, for defendant in error.

MANOR et al. v. HINDMAN.

Nov. 14, 1918.

[97 S. E. 332.]

1. Sales (§ 54*)—Contract—Construction by Parties.—The construction put by the parties themselves upon a contract for the manufacture and sale of goods to be shipped under directions to third parties will be accepted by the courts, where it does no violence to the language used.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 8, 10; 14 Va.-W. Va. Enc. Dig. 910.]

2. Sales (§ 81 (1)*)—Delivery—Reasonable Time.—Under a contract for the manufacture and sale of flour to be delivered in installments to third parties under shipping directions, the manufacturer will be allowed a reasonable time in which to make delivery of the flour but not for its manufacture; it being his duty to have the flour ready for delivery whenever called for.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 24, 25; 14 Va.-W. Va. Enc. Dig. 912.]

3. Partnership (§ 9 (2)*)—What Constitutes—Share of Profits.—Clerks who are paid salaries, and in addition are allowed a share of the profits of the business, but are not liable for losses in any event, are not copartners of their employer.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 832; 16 Va.-W. Va. Enc. Dig. 1039.]

4. Sales (§ 418 (12)*)—Breach of Contract—Goods Manufactured for Resale.—Where the seller of goods has knowledge that the goods are being purchased for resale in a particular market, or under par-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

ticular contracts, he is liable for losses caused thereby if he breaches his contract providing such losses are not uncertain or remote.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 34.]

5. Trial (§ 340 (5)*)—Verdict—Form—Correction.—A verdict for plaintiff fixing the damages “due by defendant to be \$1,200” was properly entered by court as fixing plaintiff’s damages at \$1,200.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 612; 17 Va.-W. Va. Enc. Dig. 1023.]

6. Judgment (§ 28*)—Partial Invalidity—Codefendants.—A judgment against a defendant, void because no process has been served and because the suit has been abated as to that defendant, is not void as to other defendants, since the error is correctable under Code 1904, § 3451.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 285.]

7. New Trial (§ 143 (2)*)—Misconduct of Juror—Evidence.—Affidavits of jurors as to the misconduct of jurors are to be received with great caution and only in exceptional cases in order to prevent failure of justice.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 439, 464.]

Error to Circuit Court, Shenandoah County.

Action by C. C. Hindman, trading as C. C. Hindman & Co., against J. D. Manor and others. Judgment for plaintiff, and defendants bring error. Amended and affirmed.

M. L. Walton, of Woodstock, and *Geo. N. Conrad*, of Harrisonburg, for plaintiffs in error.

Sipe & Harris, of Harrisonburg, and *Tavener & Bauserman*, of Woodstock, for defendant in error.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.